

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 7, 1967 (81 Stat 744; D.C. Official Code § 1-307.02), Reorganization Plan No.4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 920 of Chapter 9, Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Prevocational Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for prevocational services, a habilitative service, provided to participants in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

These rules amend the previously published rules by reducing the billing unit from one (1) day to fifteen (15) minutes consistent with current billing requirements; requiring a provider to render at least eight (8) minutes of service for each billing unit; eliminating the requirement that services be provided for a minimum of five (5) hours per day, not including travel time; and requiring providers to attend the annual meeting to develop the client's individual support plan. The changes in the billing unit will improve the fiscal integrity of the Medicaid Program and ensure compliance with the Health Insurance Portability and Accountability Act billing code requirements. Many persons receiving prevocational services may be unable to attend five (5) hours of prevocational services due to health-related issues. Elimination of the five (5) hour service requirement will ensure that individuals are provided the level of service in accordance with their needs. The inclusion of the service provider in the annual meetings or case conferences will ensure a more coordinated and comprehensive approach to the development of all services required by the client.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 1, 2006 (53 DCR 9597). No comments on the proposed rules were received. No substantive changes have been made. These rules will become effective on the date of publication of this notice in the *DC Register*.

Section 920 (Prevocational Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

920 PREVOCATIONAL SERVICES

920.1 The Medicaid program shall reimburse prevocational services for each client in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements in this section.

- 920.2 Clients who are not expected to be able to join the general work force or participate in transitional shelter workshops within one (1) year (excluding supported employment programs) may receive prevocational services.
- 920.3 Prevocational services are services designed to prepare a client for paid or unpaid employment, but not related to a specific job or skill.
- 920.4 Prevocational services eligible for reimbursement shall be as follows:
- (a) Assessment activities, including situational assessments provided at community businesses and other community resources;
 - (b) Socialization training, including the following services:
 - (1) Instructions;
 - (2) Interpersonal relations;
 - (3) Communications;
 - (4) Respecting the rights of others; and
 - (5) Problem solving;
 - (c) Work site skills development, which shall include, at a minimum, teaching the client the following concepts:
 - (1) Compliance with employer instructions;
 - (2) Attendance;
 - (3) Task completion; and
 - (4) Safety;
 - (d) Time-limited volunteering and other prevocational skills training indicated in the client's individual habilitation plan (IHP) or individual support plan (ISP); and
 - (e) Transportation to community activities necessary to carry out this service, provided that the transportation provider has a provider agreement to bill for transportation services pursuant to 29 DCMR §943.
- 920.5 Prevocational services may be provided in non-facility-based or facility based settings.
- 920.6 When prevocational services are provided in a facility-based setting, each facility shall comply with all applicable federal, District or State and local laws and regulations.

- 920.7 Before a provider of prevocational services may pay a client wages that are below the hourly minimum wage rate, the provider shall first obtain a certification of exemption from the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division.
- 920.8 Prevocational services shall not be eligible for reimbursement if the services are available to the client through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.*) or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. §§ 1400 *et seq.*) (hereinafter the "Acts"). Each client receiving prevocational services shall submit documentation that demonstrates that prevocational services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and individual habilitation plan (IHP) or individual support plan (ISP).
- 920.9 Each provider shall provide appropriate services for clients requiring physical assistance to participate in prevocational services activities, as well as access to first aid.
- 920.10 Prevocational services shall be authorized by the interdisciplinary team and provided in accordance with each client's IHP or ISP. All prevocational services shall be reflected on the IHP or ISP as habilitative rather than explicit employment objectives.
- 920.11 Each prevocational services provider shall:
- (a) Be a non-profit, home health agency, social service agency, or other business entity;
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for prevocational services under the Waiver;
 - (c) Maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (d) Ensure that all prevocational services staff are qualified and properly supervised;
 - (e) Ensure that the service provided is consistent with the client's IHP or ISP;
 - (f) Participate in the annual ISP or IHP meeting or case conferences when indicated by MRDDA;
 - (g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
 - (h) Provide training in infection control procedures consistent with Occupational Safety and Health Administration (OSHA), US Department of Labor regulations 29 CFR §1910.1030; and

- (i) Maintain a staff-to-client ratio; indicated in the IHP or ISP that ensures that the service meets the client's individual needs, and that services are provided appropriately and safely.
- 920.12 Each provider of prevocational services shall demonstrate through experience or academic attainment, the ability and qualification to provide prevocational services for clients with mental retardation and varying habilitation needs.
- 920.13 Each person providing prevocational services for a provider under section 920.11 shall meet all of the following requirements:
 - (a) Be at least eighteen (18) years of age;
 - (b) Be acceptable to the client;
 - (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician.
 - (d) Have the ability to communicate with the client;
 - (e) Be able to read and write the English language;
 - (f) Have a high school diploma or a general educational development (GED) certificate;
 - (g) Complete required training; and
 - (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002, (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).
- 920.14 Prevocational services shall be supervised by an individual that is a qualified professional with a minimum of a Bachelor's degree and two (2) years of combined supervisory and job coaching experience.
- 920.15 Prevocational services shall not be provided concurrently with day treatment, supported employment, or day habilitation services.
- 920.16 The billable unit of service for prevocational services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.
- 920.17 The reimbursement rate for prevocational services shall be \$5.00 per billing unit.
- 920.18 Payment is limited to twenty (20) units a day, not including travel time.

920.19 No payment shall be made for routine care and supervision, which is the responsibility of the family, group home provider or an employer.

920.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Client - an individual who has mental retardation and has been determined eligible to receive services under the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Communicable Disease - that term as set forth in Section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Individual Habilitation Plan or IHP - that term as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, § 7-1304.03).

Individual Support Plan or ISP - the successor plan to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Situational Assessment - Provides competitive or real work sites in the community for the systemic assessment and observation of the client; identifies work site characteristics and client adaptations, training procedures, support needs related to the client's success in supported employment; and recommends specific plans for further services, including the appropriateness of continuing supported employment.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 937 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Preventive, Consultative and Crisis Support Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for preventive, consultative and crisis support services provided by health care professionals to participants with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

These rules amend the previously published rules by increasing the reimbursement rates; reducing the billing unit from 1 hour to fifteen minutes consistent with current billing requirements; increasing the annual service limit from 104 hours to 200 hours; and authorizing the waiver of the annual service limit of 200 hours for an individual who requires additional crisis services to implement behavior support plans, when approved by a psychologist and the Mental Retardation and Developmental Disabilities Administration's Human Rights Committee. The revised reimbursement methodology, including amended provider standards will result in increased rates that are consistent with the Medicaid reimbursement rates for crisis and emergency services provided by the persons receiving services from the Department of Mental Health. This change will ensure consistency in standards and reimbursement for similar services. The changes in the billing unit will improve the fiscal integrity of the Medicaid program and ensure compliance with the Health Insurance Portability and Accountability Act billing code requirements. The changes to the annual limits will ensure that persons with intensive service needs can be supported with the necessary services to allow them to remain in a community based setting.

A notice of emergency and proposed rulemaking was published on December 15, 2006 (53 DCR 9950) in the *D.C. Register*. Comments were received. No substantive changes have been made to the rules, except a technical correction to change the term "client" to "consumer" where indicated in the rules. These rules shall become effective on the date of publication of this rule in the *D.C. Register*.

Section 937 (Preventive, Consultative and Crisis Support Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

SECTION 937 PREVENTIVE, CONSULTATIVE AND CRISIS SUPPORT SERVICES

- 937.1 Preventive, consultative, and crisis support services shall be reimbursed by the Medicaid Program for each consumer participating in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 937.2 Preventive, consultative, and crisis support services are services designed to support and encourage the consumer in his or her decision to reside within the community, decrease the impact of the crisis event, and assist the consumer in developing effective adaptive and coping mechanisms. These services shall be available to all Waiver eligible consumers to prevent any unnecessary change in placement, placement in a more restrictive environment, or prevent a psychiatric hospitalization. Services shall be delivered through two venues: Crisis Intervention and Stabilization and Preventive and Consultative.
- 937.3 Crisis intervention and stabilization services eligible for reimbursement include, but are not limited to the following services:
- (a) On-site assessment of the crisis situation which includes identifying the consumer's strength and resources;
 - (b) Development of intervention strategies, including person-specific intervention strategies, which address environmental and emotional issues that may affect the consumer's behavior;
 - (c) Training on proactive strategies and behavioral interventions, guiding the consumer through exploration and identification of the problem and interpretation and resolution thereof;
 - (d) Crisis supervision or expanded supervision and monitoring to stabilize the consumer;
 - (e) Formulation of a constructive plan and client resource mobilization; and
 - (f) Follow-up services, including consumer progress assessment.
- 937.4 The provider shall develop a written plan for crisis intervention which shall include all of the following information:
- (a) The names of individuals to be contacted in the event of a crisis;
 - (b) The process of responding to a crisis or emergency;
 - (c) A list of appropriate referrals;
 - (d) Conflict resolution counseling and problem solving;
 - (e) Training of informal caregivers for emergency and crisis stabilization;
 - (f) A written evaluation, including diagnosis and proposed treatment;

- (g) Goals of the proposed treatment;
- (h) Support and staffing schedules; and
- (i) Record keeping requirements.

937.5 Development of the required plan set forth in section 937.4 shall be based on the following activities:

- (a) Consumer interview;
- (b) Consumer observations at his/her residence or in the community;
- (c) Conversations with family members, friends and other professionals;
- (d) Interpreting results of lab or other medical diagnostic studies; and
- (e) Medical and psychiatric history.

937.6 Preventive and consultative services eligible for reimbursement include, but are not limited to the following services:

- (a) Training on creating positive environments and coping mechanisms; developing interventions, teamwork, and evaluation strategies to assess the effectiveness of interventions;
- (b) Consultative services to assist in the development of consumer-specific strategies;
- (c) Development and implementation of functional assessment techniques and strategies; and
- (d) Development of an effective strategy for crisis prevention.

937.7 Preventive, consultative, and crisis support services are available to family members, service providers, or other individuals that provide support and/or services to the consumer.

937.8 Preventive, consultative, and crisis services may be provided to supplement traditional medical and clinical services available under the District of Columbia State Plan for Medical Assistance.

937.9 Preventive, consultative, and crisis support services shall be authorized and provided in accordance with each consumer's individual habilitation plan (IHP) or individual support plan (ISP).

937.10 Each provider of preventive, consultative and crisis support services shall:

- (a) Be a non-profit organization, home health agency, social service agency or other business entity;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for preventive, consultative and crisis support services under the Waiver;

- (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (d) Ensure that all preventive, consultative, and crisis support services staff are qualified and properly supervised;
- (e) Ensure that the service provided is consistent with the consumer's IHP or ISP;
- (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine; and
- (g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor, as set forth in 29 CFR 1910.1030.

937.11 Persons authorized to provide preventive, consultative, and crisis support services without supervision are as follows:

- (a) Psychologist;
- (b) Psychiatrist;
- (c) Independent Clinical Social Worker; and
- (d) Advanced Practice Registered Nurse.

937.12 Persons authorized to provide preventive, consultative and crisis support services working under the supervision of qualified practitioners set forth in section 937.11 are as follows:

- (a) Registered nurse;
- (b) Independent social worker;
- (c) Licensed Professional Counselor; and
- (d) Attendant subject to the limitations set forth in section 927.13.

937.13 Services provided by an attendant shall be limited to the following tasks and duties associated with the implementation of the behavior support plan including:

- (a) Basic personal care including assistance with bathing and personal hygiene, dressing, grooming, feeding, and bowel and bladder care;
- (b) Household services including assistance with meal preparation, shopping, cleaning and laundry which are incidental to the performance of care;
- (c) Cognitive services and cueing with adaptive living skills;
- (d) Mobility services including escort and consumer transportation; and
- (e) Recording and reporting on behavior as required by the behavior support plan on a regular basis.

- 937.14 Each psychologist and licensed professional counselor shall have at least three (3) years of experience in a setting providing habilitation and crisis support services to persons with mental retardation and other developmental disabilities.
- 937.15 Each psychologist shall possess professional knowledge of psychological principles, theories, and methods with an ability to develop and implement treatment plans.
- 937.16 Each social worker shall have a Masters degree from a school of social work accredited by the Council in Social Work Education and have at least three (3) years of experience in a setting providing habilitation and crisis support services to persons with mental retardation and other developmental disabilities.
- 937.17 Each social worker shall possess knowledge of human behavior and of public and private human service systems in the District of Columbia.
- 937.18 Each nurse shall have at least three (3) years of experience in a setting providing habilitation and crisis support services to persons with mental retardation and other developmental disabilities.
- 937.19 Each psychologist, social worker, registered nurse and licensed professional counselor shall have a minimum of one (1) year's experience developing, implementing and monitoring behavior intervention plans and developing effective interventions in response to crisis situations.
- 937.20 Each attendant shall receive training on the ISP and IHP and meet all of the following qualifications:
- (a) Have a high school diploma or general educational development (GED) certificate;
 - (b) Have basic training and education in mental health;
 - (c) Have a minimum of one (1) year experience working with persons with challenging behaviors; and
 - (d) Have a minimum of three (3) years experience working with persons with mental retardation and developmental disabilities.
- 937.21 Each person providing preventive, consultative, and crisis support services shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;
 - (b) Be acceptable to the consumer;
 - (c) Demonstrate annually that he or she is free from communicable disease, as confirmed by an annual PPD Skin Test or provide documentation from a physician;

- (d) Be able to communicate with the consumer;
- (e) Have a minimum of one (1) year experience developing, implementing, and monitoring behavior intervention plans, and developing effective interventions in response to crisis situations;
- (f) Be able to read and write the English language;
- (g) Have completed training in crisis intervention and positive behavioral interventions;
- (h) Complete pre-service and in-service training required by MRDDA;
- (i) Have the ability to provide preventive, consultative and crisis support services consistent with the consumer's IHP or ISP; and
- (j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002, (D.C. Laws 12-238 and 14-98; D.C. Official Code §§ 44.551 et seq.) and implementing rules.

937.22 Preventive, consultative, and crisis support services shall be made available twenty-four (24) hours a day, seven days a week. Services shall be accessed through the consumer's case manager during regular working hours. In the event of an after hours emergency, authorization for services shall be obtained by contacting MRDDA.

937.23 The reimbursement rate for each assessment is \$240.00, which shall be at least three (3) hours in duration, including the development of the written plan for crisis intervention. Each assessment shall be rendered every six months, unless an additional billable unit of service has been authorized by the MRDDA Human Rights Committee or its subsidiary the Restricted Control Review Committee.

937.24 The reimbursement rate and billing unit for follow-up visits performed by health care professionals authorized in accordance with sections 937.11 and 937.12 is \$33.57 per billable unit. The billable unit of service shall be 15 minutes. A provider shall provide at least eight (8) minutes of service in a span of 15 continuous minutes to bill for the service.

937.25 The reimbursement rate and billing unit for attendant care is \$4.08 per billable unit. The billable unit of service shall be 15 minutes. A provider shall provide at least eight (8) minutes of service in a span of 15 continuous minutes to bill for the service.

937.26 Preventive, consultative and crisis support services shall be limited to 200 direct support hours per consumer during any one year period commencing on the date that services are authorized.

937.27 The 200 hour limitation set forth in section 937.26 may be waived by the Department of Health, Medical Assistance Administration for a consumer

who has a written behavior support plan supported by approval from a psychologist and the MRDDA Human Rights Committee or its subsidiary, the Restricted Control Review Committee. Behavior support plans that exceed the 200 hour limit shall be formally reviewed every three months by the psychologist and submitted to the MRDDA Human Rights Committee.

937.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Advance Practice Registered Nurse- A person who is licensed as an advance practice registered nurse pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 et seq.) or licensed as an advanced practice registered nurse in the jurisdiction where the services are being provided.

Consumer-An individual who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable Disease-Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Crisis-A situation where the consumer is exhibiting threatening behavior, or appears to be capable of causing physical harm or damage to another individual, personal property, or themselves.

Crisis Intervention and Stabilization Services-Services that are designed to provide an immediate on-call crisis support at the consumer's home due to an emergency or unpredicted crisis to assist the client to mobilize resources regain equilibrium and develop effective adaptive and coping mechanisms.

Crisis Supervision/ Expanded Supervision-Supervision of the client during the crisis by professionals or paraprofessionals consistent with the requirements of this section.

Functional Assessment-Includes (1) indirect assessment techniques such as interviews, written record reviews and questionnaires; (2) direct assessment techniques such as observation of the consumer, documentation of the frequency, duration and intensity of problem behaviors; and (3) the evaluation of the relationship between the environmental and emotional variables and the occurrence of problem behaviors.

Independent Clinical Social Worker-A person who is licensed as an independent clinical social worker pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 et

seq.) or licensed as an independent clinical social worker in the jurisdiction where the services are being provided.

Independent Social Worker-A person who is licensed as an independent social worker pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 et seq.) or licensed as an independent social worker in the jurisdiction where the services are being provided.

Individual Habilitation Plan (IHP)- That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) - The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Licensed Professional Counselor- A person who is licensed to practice professional counseling pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 et seq.) or licensed as a professional counselor in the jurisdiction where the services are being provided.

Psychiatrist- A person who is licensed to practice psychiatry pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 et seq.) or licensed as a psychiatrist in the jurisdiction where the services are being provided.

Psychologist- A person who is licensed to practice psychology pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 et seq.) or licensed as a psychologist in the jurisdiction where the services are being provided.

Preventive and Consultative Services- Services that are designed as an ongoing, preventive service to improve and maintain outcomes in the health, attitude and behavior of the consumer.

Registered Nurse- A person who is licensed to practice registered nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 et seq.) or licensed as a registered nurse in the jurisdiction where the services are being provided.

Regular Work Hours- Shall mean the hours of 9:00 AM to 5:00 PM, Monday through Friday, except days determined to be holidays by the District of Columbia government.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997; hereby gives notice of the adoption of an amendment to section 945 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulation (DCMR), entitled "Day Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Day Habilitation Services, a habilitative service provided by qualified professionals to participants in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules by reducing the billing unit from one day to fifteen (15) minutes consistent with current billing requirements and requiring providers to attend the annual meeting to develop the client's individual support. The changes in the billing unit will improve the fiscal integrity of the Medicaid Program and ensure compliance with the Health Insurance Portability and Accountability Act billing code requirements. The inclusion of the day habilitation service provider in the annual meetings or case conferences will ensure a more coordinated and comprehensive approach to the development of all services required by the client.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 1, 2006 (53 DCR 9602). No comments on the proposed rules were received. No substantive changes have been made. These rules will become effective on the date of publication of this notice in the *D.C. Register*.

Section 945 (Day Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

SECTION 945 DAY HABILITATION SERVICES

- 945.1 Day habilitation services shall be reimbursed by the Medicaid Program for each client with mental retardation in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 945.2 Day habilitation services for clients with mental retardation shall be designed to support the client's training and skills development outside of the home through training and skills development, which will enable the client to experience greater participation in community-integrated activities.

- 945.3 Day habilitation services eligible for reimbursement shall be as follows:
- (a) Training and skills development that increases participation in community activities and fosters independence;
 - (b) Activities that allow clients the opportunity to choose their own areas of interests and preferences;
 - (c) Activities that provide client opportunities for socialization and leisure activities in the community; and
 - (d) Transportation to community activities. The transportation provider shall have a provider agreement to bill for transportation services pursuant to 29 DCMR § 943.
- 945.4 Day habilitation services may be provided in non-facility based or facility based settings as determined by the needs of the client. When services are provided in a facility based setting, each facility shall comply with all applicable federal, District or State and local laws and regulations.
- 945.5 The provision of day habilitation services shall be coordinated with any other service identified in the client's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP).
- 945.6 Day habilitation services shall be pre-authorized and provided in accordance with the IHP or ISP. The IHP or ISP shall indicate if the staffing plan requires the participation of a licensed professional and identify the type of professional to provide the service in accordance with the client's needs.
- 945.7 Each professional providing day habilitation services shall be licensed to practice his or her respective profession pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 *et seq.*) or be licensed to practice his or her profession in the jurisdiction where services are provided.
- 945.8 A copy of the client's IHP or ISP shall be maintained in all of the following locations:
- (a) The client's home;
 - (b) The client's file maintained by the case manager; and
 - (c) The day habilitation provider.
- 945.9 Each provider of day habilitation services shall:
- (a) Be a public or private agency licensed to do business in the District of Columbia, Maryland, or Virginia;

- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for day habilitation services;
- (c) Ensure that all staff are qualified and properly supervised;
- (d) Ensure that the service provided is consistent with the client's IHP or ISP;
- (e) Develop a quality assurance system to evaluate the effectiveness of services provided;
- (f) Maintain the required staff-to-client ratio indicated on the client's IHP or ISP;
- (g) Participate in the annual ISP or IHP meeting or case conferences when indicated by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (h) Ensure that services are provided appropriately and safely;
- (i) Develop a staffing plan which includes licensed professionals, where applicable and appropriate;
- (j) Maintain records which document staff training and licensure for a period of not less than six (6) years;
- (k) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine;
- (l) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor, as set forth in 29 C.F.R. § 1910.1030; and
- (m) Have a plan to provide interpreters for non-English speaking clients.

945.10 Each provider of day habilitation services shall provide appropriate supervision of all day habilitation staff. The supervisor shall be an employee of the day habilitation services provider and make site visits to assess the level of services provided. Periodic site visits shall be conducted and documented at least twice per year and more frequently, if warranted.

945.11 Each person providing day habilitation services for a provider under section 945.9 shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the client;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;
- (d) Have a high school diploma or general educational development (GED) certificate;
- (e) Have a least one (1) year's experience working with clients with mental retardation;

- (f) Agree to carry out the responsibilities to provide services consistent with the client's IHP or ISP;
- (g) Complete pre-service and in-service training approved by MRDDA;
- (h) Have the ability to communicate with the client;
- (i) Be able to read and write the English language; and
- (j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§44-551 *et seq.*).

945.12 Day habilitation services shall not be provided concurrently with day treatment, supported employment, or prevocational services.

945.13 The reimbursement rate for day habilitation services shall be five dollars (\$5.00) per unit.

945.14 Day habilitation services shall be provided for a maximum of twenty (20) fifteen (15) minute units a day, not including travel time.

945.15 No payment shall be made for routine care and supervision. These services shall be the responsibility of the family, group home provider or employer.

945.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meaning ascribed:

Client - An individual with mental retardation who has been determined eligible to receive services under the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Communicable Disease - Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Individual Habilitation Plan (IHP) - That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) - The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 7 of the AIDS Health-Care Response Act of 1986, effective June 10, 1986 (D.C. Law 6-121; D.C. Official Code § 7-1606), 42 U.S.C.S. § 300ff-22, and Mayor's Order 2000-55, dated April 12, 2000, hereby gives notice of the adoption of the following amendments to Chapter 20 of Title 29 of the District of Columbia Municipal Regulations. The Director took final action to adopt this rule on February 27, 2007. A Notice of Proposed Rulemaking was published in the *D.C. Register* January 19, 2007, at 54 DCR 524. No comments were received in response to publication of the notice, and no changes have been made to the rule since publication of the Notice of Proposed Rulemaking.

These rules make technical corrections and expand the authority of the HIV/AIDS Drug Advisory Committee to include all therapeutics, including anti-psychotic drugs, in the formulary for the AIDS Drug Assistance Program. This rule will become effective upon publication of this notice in the *D.C. Register*.

Chapter 20 of Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations is amended as follows:

The heading for Chapter 20 is amended to read as follows:

**Chapter 20 FINANCIAL ASSISTANCE FOR THERAPEUTIC DRUG
TREATMENT FOR PERSONS WITH AIDS OR RELATED
ILLNESSES**

Section 2000.1 is amended to read as follows:

- 2000.1 These rules govern the operation of the District of Columbia's AIDS Drug Assistance Program (ADAP), which assists low-income individuals diagnosed with having Human Immunodeficiency Virus (HIV) or Acquired Immunodeficiency Syndrome (AIDS), and related illnesses, in purchasing certain therapeutic drugs, including anti-psychotic drugs, approved by the U.S. Food and Drug Administration that prolong the life of a person with these conditions or treat related illnesses when prescribed by a physician.

Section 2001.1 is amended to read as follows:

- 2001.1 Information about applicants and recipients of assistance under this program shall be kept confidential. The information shall be used solely for the purpose of administering the program and shall not be disclosed without the prior written consent of the person to whom the information pertains, except to Department personnel who have a need to know for

administrative purposes. The information shall be safeguarded according to the procedures used by the District of Columbia Medicaid Program and the criteria set forth in 42 CFR § 431.300 *et seq.*

Section 2002.2 is amended to read as follows:

- 2002.2 An applicant shall submit an application for assistance for eligibility determination to the ADAP, Administration for HIV Policy and Programs of the Department of Health.

Section 2002.4 is amended to read as follows:

- 2002.4 An applicant shall provide written consent for his or her physician to disclose the information required by § 2002.3 to the Department. The written consent shall also state that the information shall be used only for the purpose of administering this financial assistance program and shall not be disclosed to persons other than Department personnel who have a need to know for administrative purposes, unless the person to whom the information pertains gives his or her written consent.

Section 2005.5 is amended to read as follows:

- 2005.5 The Administration for HIV Policy and Programs shall seek reimbursement from the patient's insurance carrier or other third-party sources providing reimbursement of any amount chargeable to the carrier or third-party payor.

Section 2099.1 is amended by adding or amending the following terms to read as follows:

Department—the District of Columbia Department of Health.

Eligible drug—Retrovir (AZT), alpha interferon, aerosolized pentamidine, or another drug that is approved by the U.S. Food and Drug Administration for therapeutic treatment of persons with HIV/AIDS or related illnesses and that is certified for inclusion in this program in a notice published in the *D.C. Register*.